

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6855 OF 2015

1. Ajinath S/o Shahdeo Dole
Age : 30 years, Occu : Agril,
R/o : Dolechiwadi, Tq. Shirur,
District Beed.
2. Shahadeo S/o Daula Dole,
Age : 55 years, Occu : Agril.,
R/o : As above.
3. Ashabai W/o Shahdeo Dole,
Age : 50 years, Occu : Household,
R/o : As above.
4. Sambhaji S/o Shahdeo Dole,
Age : 23 years, Occu : Education.
R/o : As above.

Applicants

-VERSUS-

The State of Maharashtra
Through : API/In – Charge of,
Police Station, Patoda,
Tal. Patoda, District – Beed.

Respondent

Mr. R.G. Hange, Advocate for the Applicants.
Mr. S.G. Karlekar, APP for Respondent/State.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/07/2016

PER COURT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The applicants are aggrieved by the order dated 02.12.2015 by which the learned Assistant Judge, Beed has disallowed the question “Prior to death of Rani who was come to her house for enquiry ?”

3. The applicants are accused in the Sessions Case No.58 of 2015. The deceased Rani is said to have died on 16.01.2015. One of the panch, namely Manjula Navnath Sonwane was called by the Police for inquest Panchnama on 16.01.2015. She was called upon to reach at Dolyachiwadi at the well of Sukhdeo Dole.

4. In the deposition before the learned Court at Exhibit-65, Manjula narrated, as a panch in the inquest, the manner in which the dead body was placed, the direction of her head and legs, injuries on the head and face.

5. Upon being asked by the Police to examine the private part of

the dead body, she inspected and saw injuries on the private part. Her son Akash was found tied by the scarp to her left hand and another son Adarsha was tied to her right hand by the end of her own blue colour Sari. She deposed before the learned Sessions Judge strictly in her capacity as a panch who had seen the inquest Panchnama.

6. Learned Advocate for the Applicants strenuously submits that Section 138 of the Evidence Act enables the party conducting the cross-examination to ask any question. He submits that asking any questions means such questions which may be relevant to the case. Therefore, the question “Prior to death of Rani who was come to her house for inquiry” was a relevant question and the objection of the learned APP should not have been entertained by the Sessions Court. He further submits that the learned Court was wrong in concluding that the cross-examination should be restricted to the examination-in-chief of the witness for which purpose such witness is called.

7. Learned Advocate had relied upon the judgment of the learned

Division Bench of this Court in the matter of *Sunil Atmaram More Vs. State and another* **2011 (3) BCR (Criminal) 652**. By relying on paragraph No. 18 of the said judgment, learned Advocate submits that Section 138 of the Evidence Act would not create restrictions on the cross-examination and as such any question can be put to the witness as long as the same is in connection with the purpose for which the witness is being examined.

8. Learned APP for the State has supported the impugned order. He submits that since the petitioner filed an application Exhibit-67 before the learned Sessions Judge disclosing his intention to challenge the order before the High Court, the cross-examination has been deferred from 02.12.2015.

9. I have considered the submissions of the learned Advocates for the petitioner and the respondent.

10. The issue is as regards posing any question in the cross-examination to the witness.

11. In the matter of *Sunil Atmaram More* (Supra), this Court noticed that the prosecutrix was faced with a volley of questions during her stressful cross-examination. Questions as regards the size of the road, the size of the Police Chowki, number of windows to the Police Chawki details of joining civil defense course and of similar nature are put to her.

12. This Court, therefore, observed that this situation reminds of the scope of Section 138 of the Evidence Act, which gives the defense a right to cross-examine the witness. It was observed that the object of cross-examination was to impeach the accuracy, credibility and general value of the evidence given in chief and to expose discrepancies in the statements made in examination in chief. This Court, therefore, noted that questions on irrelevant topics ought not to be posed to the witness.

13. In the instant case, it appears that the witness panch had been presented as witness No.1 only because she was a panch while the

Police conducted the inquest panchnama. Even in her examination -in-chief, she has specifically narrated only those aspects which she has seen while being a part of the panchnama. Though she is distantly related to the deceased, she has not deposed about anything else but to the extent of her role in the inquest panchnama, thereby indicating that she was not a witness for any other purpose.

14. The learned Session Judge, in my view, therefore rightly upheld the objection of the learned APP that the question posed to the said witness was beyond the scope of her deposition and the said question was not asked to impeach the accuracy, credibility or the general value of the examination-in-chief or to expose the discrepancies, as has been concluded by the Division Bench in paragraph No. 18 of the Sunil Atmaram More judgment.

15. In the light of the above, I do not find any merit in this matter. The same is, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)